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In re Application of BEN-AROYA et al
U.S. Application No.: 10/595,338
PCT Application No.: PCT/IL2006/000323
Int. Filing Date: 12 March 2006
Priority Date Claimed: none
Attorney Docket No.: 0005237USU/2279
For: APPARATUS AND METHOD FOR
TARGET ORIENTED LAW ENFORCEMENT
INTERCEPTION AND ANALYSIS

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DECISION

This is in response to applicant's petitions under 37 CFR 1.137(a) and (b) filed 02 October 2009 and petition under 37 CFR 1.78(a)(3) filed 05 October 2009.

BACKGROUND

On 12 March 2006, applicant filed international application PCT/IL2006/000323. A copy of the international application was communicated to the USPTO from the International Bureau on 20 September 2007. The thirty-month period for paying the basic national fee in the United States expired on 12 September 2008.

On 10 April 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was not accompanied by the basic national fee required by 35 U.S.C. 371(c)(1).

On 17 June 2009, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application became abandoned as to the United States for failure to timely pay the basic national fee.

On 02 October 2009, applicant filed the present petitions under 37 CFR 1.137(a) and (b).

On 05 October 2009, applicant filed the present petition under 37 CFR 1.78(a)(3).

DISCUSSION

I. Petition under 37 CFR 1.137(a)

Under 37 CFR 1.137(a), a petition requesting that an application be revived on the grounds of unavoidable abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(l), (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1) above, applicant has provided the required reply.

With regard to item (2) above, applicant has provided the required petition fee.

With regard to item (3) above, applicant has not provided the required showing. The petition states that the papers filed 10 April 2006 should have been treated as a filing under 35 U.S.C. 111(a) because the declaration did not claim priority to the international application, because the Office did not send a "Notice to File Missing Parts", and because the Office mailed a decision on applicant's petition to make special under 37 CFR 1.102(c). However, MPEP 1893.03(a) specifies that if a submission is clearly identified as a national stage filing and there are no conflicting instructions, the application will be treated under 35 U.S.C. 371. In the present case, the EFS-Web Electronic Acknowledgement receipt clearly indicates that the submission was made under 35 U.S.C. 371. The fact that the submitted declaration did not contain a priority claim to the international application is entirely consistent with a filing under 35 U.S.C. 371. Similarly, the fact that the Office did not mail a "Notice to File Missing Parts" is consistent with a national stage application, as the Office does not send a missing parts notice for the basic national fee. Additionally, the fact that applicant filed a petition to make special is not an "instruction" by applicant that the application be treated as a filing under 35 U.S.C. 111(a).

With regard to item (4) above, because the application was filed after 08 June 1995, no terminal disclaimer is required.

II. Petition under 37 CFR 1.137(b)

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), applicant has provided the required statement.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

III. Petition under 37 CFR 1.78(a)(3)

Because the present application was properly treated as a national stage filing under 35 U.S.C. 371 instead of a filing under 35 U.S.C. 111(a), the petition to accept an unintentionally delayed priority claim to the international application is not appropriate.

CONCLUSION

For the reasons set forth in §I above, the petition under 37 CFR 1.137(a) is DISMISSED without prejudice.

For the reasons set forth in §II above, the petition under 37 CFR 1.137(b) is GRANTED.

For the reasons set forth in §III above, the petition under 37 CFR 1.78(a)(3) is DISMISSED AS MOOT.

The application has an International Filing Date under 35 U.S.C. 363 of 12 March 2006, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 02 October 2009.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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